

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Mass. Dept. of Elementary and  
Secondary Education,  
Petitioner

v.

Joaquim Andrade,  
Respondent

Division of Administrative Law Appeals  
One Congress Street, 11th Floor  
Boston, MA 02114  
Tel: 617-626-7200  
[www.mass.gov/dala](http://www.mass.gov/dala)

Docket No. MS-16-430  
Dated: February 27, 2017

**FINAL DECISION – ORDER OF DISMISSAL**

Joaquim Andrade has appealed from a Mass. Department of Elementary and Secondary Education notice that it has probable cause to revoke his educator's license because of an indictment returned against him and his failure to report the indictment to the agency. He has twice failed to appear for scheduled prehearing conferences at the Division of Administrative Law Appeals (DALA) and he has failed to file an answer, as previously ordered. I am therefore dismissing his appeal for lack of prosecution. 801 C.M.R. § 1.01(7)(g)2.

I scheduled a prehearing conference for November 4, 2016. Mr. Andrade failed to appear at the conference, and as a consequence, I issued him an order to show cause in writing by November 22, 2016 why his hearing request should not be dismissed for failure to prosecute. On that date, Mr. Andrade faxed a request that the matter be stayed until the criminal charges against him were resolved. I issued an order following that response in which I stated that:

Mr. Andrade's concern that any statements he might make in this proceeding might be used against him in a future criminal case are not an adequate explanation for his

failure to attend the prehearing conference. He could have gone to the conference and made the same request.

Order (Nov. 28, 2016.) Nonetheless, I informed the parties that I was willing to consider a stay, and would await the Department's response to Mr. Andrade's motion. I also suggested to him that he discuss a stay with Department counsel.

In its response, the Department objected to staying the administrative appeal until the criminal case is resolved at some unknown time, and advised that Mr. Andrade had not contacted the Department to discuss his stay request. Thereafter, I denied the motion to stay:

because Mr. Andrade has provided insufficient information about the status of the criminal case and why charges related to crimes he says he is wrongly accused of should cause a halt at this juncture to the pending administrative appeal concerning his license. I am willing to consider this question of a stay further. It can be discussed at the prehearing conference I am scheduling, but Mr. Andrade must be prepared with further details about the status of the criminal case and reasons why a stay is required.

Ruling on Motion to Stay; Second Prehearing Conference Order (Dec. 9, 2016.) I ordered Mr. Andrade to file an answer by January 8, 2017 and to attend a prehearing conference on January 27, 2017. I informed him that I was willing to take the criminal trial date into account when scheduling a hearing. Finally, I reminded Mr. Andrade that:

Attendance at the prehearing conference is mandatory. Failure to attend may lead to dismissal. This is particularly so in this instance because Mr. Andrade failed to attend the first scheduled prehearing conference.

*Id.*

Mr. Andrade did not file an answer or attend the prehearing conference. I therefore issued another order to show cause ordering him to explain his absence, and warning him

that “[t]he continued pendency of criminal charges against him is not good cause for his failure to attend the conference.” Order to Show Cause (Jan. 27, 2017.)

Mr. Andrade responded that he had been told by his criminal defense attorney “not to speak to anyone about the [criminal] case,” as was his constitutional right. He stated that the criminal trial was scheduled for May 2017, and that, until then, it was his “right not to appear before your Board until the trial.” He requested that DALA contact his defense attorney rather than him.<sup>1</sup>

I had mailed my November 28, 2016 order to Mr. Andrade’s criminal defense counsel and invited him to file a notice of appearance at DALA if he intended to represent Mr. Andrade in this administrative appeal. He has not filed an appearance. I take that to mean he is not representing Mr. Andrade at DALA. Therefore, Mr. Andrade is representing himself.

I understand Mr. Andrade’s persistence in following criminal defense counsel’s advice not to discuss the substance of the criminal charges against him. That is indeed his right under the Constitution. But as I pointed out to Mr. Andrade in my November 28, 2016 order, the “pending [criminal charge] does not prevent the Department of Elementary and Secondary Education from taking administrative action against his license.” Not only is the administrative appeal not automatically stayed, the pendency of the criminal case does not prevent Mr. Andrade from appearing at a conference to discuss

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<sup>1</sup> Mr. Andrade also claimed that if he were to be cleared of criminal charges his license would be returned automatically. I express no opinion concerning this question. Mr. Andrade should contact the Department to determine its view on it.

scheduling or other case-related matters that would not require him to make statements concerning the substance of the charges against him.

Prehearing conferences at DALA are mandatory. They are necessary for magistrates assigned to hear an appeal to figure out how to schedule cases for hearing or, in a case like this, to determine whether the appeal should be stayed for a period of time. Mr. Andrade has twice chosen not to appear at scheduled conferences. I have explained at length the need to appear at a prehearing conference, and despite my explanation, he has refused to attend. He has also declined to answer the complaint against him. Answering the complaint would not have involved any inquiry into matters as to which he could have invoked his right against self-incrimination. On the criminal charges, the Department alleged only that Mr. Andrade was charged and that he was arraigned on the charges. He could have admitted both without incriminating himself. His persistent failure to take the steps needed early on in an administrative appeal to move the case forward leads me to dismiss this appeal for lack of prosecution.

I note that I did not act immediately on Mr. Andrade's request to stay this matter until sometime after his May 2017 trial. I gave time for the Department to respond, if it chose to do so. It did not. I take this silence to mean that the Department continues to oppose a stay. I have taken this into account in deciding to dismiss the appeal.

The dismissal of the appeal means that Mr. Andrade's license is revoked. This revocation is based strictly on Mr. Andrade's failure to prosecute his appeal. It is not based on a determination of the underlying merits of the Department's assertion that Mr.

Andrade's license should be revoked.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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James P. Rooney  
First Administrative Magistrate

Notice sent to: Jennifer Adreani, Esq.  
Joaquim Andrade